



HF 296 – Synthetic Drugs (LSB1759HV)
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Fiscal Note Version – As Amended and Passed by the House
Requested by Senator Tony Bisignano

Description

[House File 296](#), as amended by H-1105, modifies procedures relating to the temporary designation of substances as controlled substances and modifies the penalties for imitation controlled substances and other certain controlled substance. This Bill modifies and broadens the criteria for determining if a substance found in a synthetic drug makes it an illegal compound.

Background

This Bill allows the Board of Pharmacy to designate, by administrative rule, a new substance as a controlled substance temporarily for up to two years without legislation. If the Legislature does not amend Code chapter [124](#) to enact a temporary designation within two years, it would automatically be repealed. Current law allows 60 days for this temporary designation.

Imitation controlled substances are defined as a substance that is not a controlled substance, but appears to be or resembles a controlled substance. Imitation controlled substances are currently regulated in Iowa Code chapter [124A](#). This Bill repeals that Iowa Code chapter and transfers the regulation of imitation controlled substances to Iowa Code chapter 124, which currently regulates controlled substances.

Current law for imitation controlled substances provides the following:

- If a person unlawfully manufactures, delivers, or possesses with intent to deliver, it is an aggravated misdemeanor.
- If a person delivers to a minor that is at least three years younger than the violator, it is a Class D felony.
- If a person unlawfully and knowingly publishes an advertisement or distributes in a public place a promotion for an imitation controlled substance, it is a serious misdemeanor.

Under this Bill, with the transfer of regulation to Iowa Code chapter 124, imitation controlled substances are amended into the penalties that are applicable to the manufacture, delivery, possession with intent to deliver, or possession of controlled substances. These penalties are more serious than those in Iowa Code chapter 124A and range from serious misdemeanor to Super Class B felony offenses depending on the amount of the substance, number of previous offenses, and location of the offense arrest.

Assumptions

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner length of stay (LOS); revocation rates; plea bargaining; and other criminal justice system policies and practices.
- A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.

- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$15 per day.
- Expansion of the definition of synthetic drugs would likely result in some charges that are currently dismissed or acquitted becoming convictions. It is assumed that 50.0% of current dismissed or acquitted charges would become convictions.
- It is not known if increased penalties for imitation controlled substances will result in greater prosecutions and convictions of these cases in the future.

Impacts

Correctional Impact

In FY 2016, there were two dismissed or acquitted charges for Iowa Code section [124A.4\(1\)](#) offenses; therefore, it is assumed that there would be one additional conviction yearly. It is unknown what crime classification this conviction would be. **Table 1** below shows estimates for sentencing to State prison, parole, probation, or CBC residential facilities; LOS under those supervisions; and supervision marginal costs per day for convictions of serious and aggravated misdemeanors, and Class B, C, and D felonies. Refer to the LSA memo addressed to the General Assembly, [Correctional Impact Memo](#), dated January 30, 2017, for information related to the correctional system.

Table 1 – Marginal Costs and LOS

	Percent to Prison	Avg LOS Prison (months)	FY 16 Marginal Cost/Day Prison	Avg LOS Parole (months)	Percent to Probation	Avg LOS Probation (months)	FY 16 Avg Cost/Day Parole & Probation	Percent to CBC	FY 16 Marginal Cost/Day CBC	Percent to County Jail	Avg LOS County Jail (days)	Marginal Cost/Day Jail
Class B Felony	86.0%	33.5	\$18.51	33.4	29.0%	34.2	\$4.59	6.0%	\$10.28	56.0%	N/A	\$15.00
Class C Felony	75.0%	19.5	\$18.51	19.4	29.0%	34.9	\$4.59	12.0%	\$10.28	25.0%	N/A	\$15.00
Class D Felony	74.0%	11.7	\$18.51	13	67.0%	31.6	\$4.59	11.0%	\$10.28	27.0%	N/A	\$15.00
Aggravated Misdemeanor	20.0%	7.0	\$18.51	6.2	33.0%	19.8	\$4.59	2.0%	\$10.28	39.0%	27	\$15.00
Serious Misdemeanor	2.0%	5.9	\$18.51	N/A	60.0%	16.1	\$4.59	1.0%	\$10.28	72.0%	14	\$15.00

Minority Impact

This Bill would have an unknown minority impact to the African-American community. In FY 2016, there were six convictions related to imitation controlled substances. Four of these were Caucasian, one was identified as Other, and one was unknown. The U.S. Census estimate as of July 1, 2015, states that the Iowa population was 3.5% African American. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Memo](#), dated January 30, 2017, for information related to minorities in the criminal justice system.

Fiscal Impact

The fiscal impact of this Bill is difficult to determine, and estimated to be minimal. Based upon past occurrences, there would be one additional conviction annually for imitation controlled substances. The estimated cost for one additional conviction would range between:

- \$250 and \$4,200 for a serious misdemeanor.
- \$3,100 and \$7,000 for an aggravated misdemeanor.
- \$6,300 and \$12,300 for a Class D felony.
- \$7,500 and \$18,600 for a Class C felony.
- \$9,500 and \$33,700 for a Class B felony.

The prison population could increase over time depending on the conviction classification and LOS. The marginal cost for one additional prison inmate per year based upon current costs is \$6,750.

Sources

Department of Human Rights, Division of Criminal and Juvenile Justice Planning
Department of Corrections
Office of the State Court Administrator
Office of the State Public Defender

/s/ Holly M. Lyons

April 3, 2017

The fiscal note for this Bill was prepared pursuant to Joint Rule 17 and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.
